

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CRAIG MICHAEL KIRK,	:	
	:	
Plaintiff,	:	Case No. 09-583
	:	
vs.	:	Judge Graham
	:	
MUSKINGUM COUNTY, OHIO, ET AL.	:	Magistrate Judge Kemp
	:	
Defendants.	:	

FINAL PRETRIAL ORDER

This action came before the Court at a final pretrial conference held on May 20, 2011, at 10:00 a.m., pursuant to Rule 16 FRCP.

I. APPEARANCES:

For Plaintiff: Craig Kirk, Pro Se

For Defendants: Jessica K. Philemond, Esq.

II. NATURE OF ACTION AND JURISDICTION

- A. This is an action for damages brought under 42 U.S.C. 1983.
- B. The jurisdiction of the Court is invoked under 28 U.S.C. 1331 and 1343.
- C. The jurisdiction of this Court is not disputed.

¹ This Pretrial Order is filed one day late pursuant to Plaintiff Craig Kirk's request. Plaintiff and counsel for Defendant discussed the matter on the telephone and through e-mail correspondence on May 16, 2011. On that date, Defendants provided Plaintiff with a copy of the Court's Pretrial Order, which had been sent to the parties previously. In an e-mail on May 17, 2011, Plaintiff indicated that he could not work all day due to his religion's Sabbath. The Court agreed to allow Plaintiff an additional day and for the parties to file this Order on this date.

As of the time of this filing, Plaintiff has neglected to respond to e-mail and telephone calls inquiring on the status. Therefore, Defendants must provide the Pretrial Order without Plaintiff's additions.

III. **TRIAL INFORMATION**

- A. The estimated length of trial is 2-3 days.
- B. Jury Trial has been set for June 6, 2011 pursuant to the General Order on Trial Assignment.

IV. **AGREED STATEMENTS AND LISTS:**

- A. General Nature of the Claims of the Parties: [Note: These are not agreed statements by the parties and have been provided separately by Plaintiff and Defendants.]

1. By Plaintiff:

2. By Defendants:

Defendants at no point in time imposed a substantial burden on the religious exercise of prisoner Kirk as is prohibited by the Religious Land Use and Institutionalized Persons Act (RLUIPA). Plaintiff admits in his Complaint that he requested and was given religious clothing items from Defendants as well as religious books.

Defendants deny that Plaintiff was harassed by the Jail's female laundry clerk.

Defendants submit that Plaintiff is barred from bringing the within action in accordance with the Prison Litigation Reform Act, as he failed to exhaust available administrative remedies at the Jail. See, 42 U.S.C. § 1997(e)(a); *White v. McGinnis*, 131 F.3d 593, 595 (6th Cir. 1997).

- B. Uncontroverted Facts:

The following facts are established by admissions in the pleadings or by stipulation of counsel.

- Plaintiff was arrested by the City of Frazeyburg police on September 1, 2007.
- Plaintiff began his 60 day jail sentence on January 3, 2008 at the Muskingum County Jail.
- Plaintiff refused to complete an indigency form offered to him to get him an attorney.
- Plaintiff requested religious items (a Bible and a shawl) on February 2, 2008. Plaintiff also requested some legal books on that date.

- On February 4, 2008 Plaintiff was given a prayer shawl by Jail staff as requested.
- On February 5, 2008 Plaintiff was given a Bible. Plaintiff was told on this date that he would need to have his legal books brought in to the Jail for inspection.
- On February 6, 2008 Plaintiff was given legal books available within the Jail.

C. Issues of Fact and Law:

1. Contested Issues of Fact: The contested issues of fact remaining for decision are:
 - (a) Plaintiff states:
 - (b) Defendants state that there are no contested issues of fact for a jury.
2. Contested Issues of Law: The contested issues of law, in addition to those implicit in the foregoing issues of fact, are:
 - (a) Plaintiff states:
 - (b) Defendants state that there remain issues of law which Defendants respectfully ask the Court to consider prior to trial. They are the following:
 - Whether Plaintiff perfected service on any individuals sued in the case. Defendants submit that Plaintiff was given leave by the Court to do so and has failed.
 - Whether Plaintiff has any triable claim remaining against the County Defendants.

D. Witnesses:

1. In the absence of reasonable notice to opposing counsel to the contrary, plaintiff will call, or will have available at the trial:
 - (a)
 - (b)
2. In the absence of reasonable notice to opposing counsel to the contrary, Defendants will call, or will have available at the trial:
 - (a) Probation Officer Shawn Brady;

- (b) Deputy Brad Shawger;
 - (c) Sergeant John Winters;
 - (d) Sergeant John Lang;
 - (e) Female Jail Laundry Staff;
 - (f) Joanna Sharp, intake officer;
 - (g) Captain Joe Miller, Jail Administrator;
 - (h) Plaintiff Craig Kirk, on cross examination
 - (i) Jeannette Kirk, on cross examination
 - (j) All witnesses called by Plaintiff, on cross examination
3. In the event other witnesses are to be called at the trial, a statement of their names and addresses and the general subject matter of their testimony will be served upon opposing counsel and filed with the Court at least 7 days prior to trial.
4. There is reserved to each of the parties the right to call such rebuttal witnesses as may be necessary, without prior notice thereof to the other party.

Expert Witnesses:

Neither party has expert witnesses in this case.

F. Exhibits:

Appendix A	Joint Exhibits
Appendix B	Plaintiff's Exhibits
Appendix C	Defendants' Exhibits

G. Depositions:

The parties will not offer any testimony by deposition/video tape at this time.

I. Miscellaneous Orders:

The foregoing stipulations and statements are amended at the final pretrial conference as follows: _____

V. **MODIFICATION**

This final pretrial order may be modified at the trial of this action, or prior thereto, to prevent manifest injustice. Such modification may be made by application of counsel or on motion of the Court.

VI. **JURY INSTRUCTIONS**

The parties shall confer in advance of the final pretrial conference and agree upon proposed jury instructions which shall be delivered to the Court seven (7) days before the trial date. If the parties are unable to agree on how the jury should be instructed as to any issue, they shall each submit their proposed instructions on any such issue(s). There is reserved to counsel the right to submit supplemental requests for instructions during the trial or at the conclusion of the evidence on matters that cannot be reasonably anticipated. All proposed jury instructions shall be submitted in hard copy and on 3.5" Micro disks in a format compatible with WordPerfect version 5.1 or later.

VII. **SETTLEMENT EFFORTS**

Plaintiff submitted a demand to Defendants. Defendants have not made a counteroffer to that demand.

VIII. **ADDITIONAL ACTION TAKEN**

None at this time.

James L. Graham
United States District Judge

/s/

Pro Se Plaintiff

/s/ Jessica K. Philemond

Counsel for Defendants

APPENDIX B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

CRAIG MICHAEL KIRK

JOINT EXHIBIT LIST

v.

CASE NUMBER: 2:09-CV-00583

MUSKINGUM COUNTY, OHIO, et al.

PRESIDING JUDGE James L. Graham			PLAINTIFF'S ATTORNEY Craig M. Kirk, Pro Se		DEFENDANTS' ATTORNEY Jessica K. Philemond
TRIAL DATE(S) June 6-8, 2011			COURT REPORTER		COURTROOM DEPUTY
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS*

APPENDIX C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

CRAIG MICHAEL KIRK

PLAINTIFF'S EXHIBIT LIST

v.

CASE NUMBER: 2:09-CV-00583

MUSKINGUM COUNTY, OHIO, et al.

PRESIDING JUDGE James L. Graham			PLAINTIFF'S ATTORNEY Craig M. Kirk, Pro Se		DEFENDANTS' ATTORNEY Jessica K. Philemond
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APPENDIX D**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO****CRAIG MICHAEL KIRK****DEFENDANTS' EXHIBIT LIST****v.****CASE NUMBER: 2:09-CV-00583****MUSKINGUM COUNTY, OHIO, et al.**

PRESIDING JUDGE James L. Graham			PLAINTIFF'S ATTORNEY Craig M. Kirk, Pro Se		DEFENDANTS' ATTORNEY Jessica K. Philemond
TRIAL DATE(S) June 6-8, 2011			COURT REPORTER		COURTROOM DEPUTY
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS*
	D-1				Muskingum County Jail Inmate Handbook
	D-2				Jail Commitment after Conviction and Sentence, Case No. TRC 0705102, Craig Kirk
	D-3				Muskingum County Sheriff's office inmate booking and release forms for Craig Kirk
	D-4				Narrative Reports, Muskingum County Jail, related to Inmate Craig Kirk
	D-5				Craig Kirk Inmate File, Muskingum County Jail
	D-6				"Demand for Relidius [sic.] Articals [sic.]" by Craig Kirk, Pro Se
	D-7				Jail Management "Personal Effects Report" for Craig Kirk, dated January 3, 2008
	D-8				Correspondence from Craig Kirk to Captin [sic.] Miller, dated January 17, 2008
	D-9				Inmate Visitor Logs, Craig Kirk
	D-10				Muskingum County Jail Policies and Procedures